

REMARKS

Claims 1-14, 18-24, and 35-46 are now pending in the application. Claims 1, 4, 5, 6, 8, 9, 10, and 21 are amended. Claims 35-47 are added. Claims 15-17 and 25-34 are cancelled without prejudice to the subject matter contained therein. Applicant reserves the right to refile these cancelled claims and contest the rejections thereof in one or more subsequent applications. The Examiner is respectfully requested to reconsider and withdraw the objections and rejections in view of the amendments and remarks contained herein.

SPECIFICATION

The specification stands objected to for certain informalities. Applicant has amended the specification according to the Examiner's suggestions. Therefore, reconsideration and withdrawal of this objection to the specification are respectfully requested.

CLAIM OBJECTIONS

Claims 4 and 31 stands objected. The amendments to claim 4 and cancellation of claim 31 have rendered moot the objections thereto. Accordingly, reconsideration and withdrawal of the objections to claims 4 and 31 are respectfully requested.

REJECTION UNDER 35 U.S.C. § 102

Claims 1-8

Claims 1-5 and 7-8 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Landauer (U.S. Patent 2,347,915). Claims 1 and 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Parker (U.S. Patent 4,907,132). These rejections are respectfully traversed.

At the outset, Applicant notes that the amendments to claim 1 have rendered moot the rejection of claim 1 (and claims 2-8 depending therefrom). In addition, independent claim 1 has been amended to clarify that the therapeutic

device includes “a container having a pocket on an outer surface of the container, a hot/cold gel within the container, and a member removably positioned within the pocket, the member having at least one light source capable of emitting therapeutic light.” This is not disclosed by Landauer or Parker, and, accordingly, neither Landauer nor Parker can anticipate claim 1 (and claims 2-8 depending therefrom). Plus, none of the cited patents disclose, teach, or suggest a container having a pocket, or a hot/cold gel within the container as recited in claim 1. For at least these reasons, Applicant submits that claim 1 (and claims 2-8 depending therefrom) are allowable.

In addition, claim 5 further recites “removing the member having the light source from the pocket, heating the hot/cold gel within the container, and repositioning the member having the light source within the pocket prior to applying the therapeutic device to the user’s body.” This is not disclosed, taught, or suggested by the cited patents. Plus, the cited patents also fail to recognize the unobvious advantages which can be realized by the method as recited in claim 5. For example, removing the light sources from the container allows the container to be heated, such as in a conventional oven, microwave, hot water, etc. separately from the light sources. This, in turn, eliminates (or least reduces the likelihood) of the light sources being damaged from the heating process. For these additional reasons, Applicant respectfully submits that claim 5 is patentably distinguishable over the cited patents.

Claim 6 further recites “removing the member having the light source from the pocket, cooling the hot/cold gel within the container, and repositioning the member having the light source within the pocket prior to applying the therapeutic device to the user’s body.” This is not disclosed, taught, or suggested by the cited patents. Plus, the cited patents also fail to recognize the unobvious advantages which can be realized by the method as recited in claim 6. For example, removing the light sources from the container allows the container to be cooled, such as in a refrigerator or freezer, etc., separately from the light sources. This, in turn, eliminates (or least reduces the likelihood) of the light sources being damaged from the cooling process. For these additional reasons,

Applicant respectfully submits that claim 6 is patentably distinguishable over the cited patents.

Claims 9, 11, 17, and 19

Claims 9, 11, 17 and 19 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Landauer (U.S. Patent 2,347,915). This rejection is respectfully traversed.

First, the amendments to claim 9 and cancellation of claim 17 have rendered moot the rejection of claim 9 (and claims 11 and 19 depending therefrom) and claim 17. In addition, independent claim 9 has been amended to clarify that the therapeutic device includes “a container including a pocket on an outer surface of the container, a non-electrical agent within the container for applying at least one of hot therapy and cold therapy, and a member including at least one light source for emitting therapeutic light, the member being sized to be positioned within the pocket.” These features are not disclosed by Landauer, and, accordingly, Landauer cannot anticipate claim 9 (and claims 11 and 19 depending therefrom). For example, Landauer discloses an electric heater. These claimed features are also not disclosed, taught, or suggested by the cited patents. For at least these reasons, Applicant submits that claim 9 (and claims 11 and 19 depending therefrom) is allowable.

Claims 21-24

Claims 21-24 are rejected under 35 U.S.C. § 102(b) as being anticipated by Prescott (U.S. Patent 5,616,140). This rejection is respectfully traversed.

The amendment to claim 21 has rendered moot the rejection of claim 21 (and claims 22-24 depending therefrom). In addition, independent claim 21 has been amended to clarify that the therapeutic device includes “a hot/cold gel pack.” This feature is not disclosed by Prescott, and, accordingly, Landauer cannot anticipate claim 21 (and claims 22-24 depending therefrom). Plus, none of the cited patents disclose, teach, or suggest each and every feature recited in

claim 21. For at least these reasons, Applicant submits that claims 21-24 are allowable.

Claims 27-34

Claims 27-32 are rejected under 35 U.S.C. § 102(b) as being anticipated by Altshuler et al (U.S. Publication 2004/0147984). Claims 33-34 are rejected under 35 U.S.C. § 102(b) as being anticipated by Altshuler et al (U.S. Publication 2004/0147984). These rejections are respectfully traversed.

Claims 27-34 have been cancelled, thereby rendering moot the rejections thereof.

REJECTION UNDER 35 U.S.C. § 103

Claim 10

Claim 10 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Landauer (U.S. Patent No. 4,907,132) as applied to Claim 9 above, and further in view of applicant's admitted prior art. This rejection is respectfully traversed.

Claim 10 depends from claim 9, which was shown above to be allowable. Accordingly, Applicant respectfully submits that claim 10 is also allowable for allowance for at least the reasons given above in connection with claim 9. In addition, claim 10 is further patentably distinguishable over the cited patents because these patents do not disclose, teach or suggest "a hot/cold gel" in combination with the other features recited in claim 10.

Claims 12-16

Claims 12-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Landauer (U.S. Patent No. 4,907,132) as applied to Claim 9 above, and further in view of Altshuler et al. (U.S. Publication 2004/0093042). This rejection is respectfully traversed.

The cancellation of claims 15 and 16 has rendered moot the rejections thereof.

Claims 12-14 depend from claim 9, which was shown above to be allowable. Accordingly, Applicant respectfully submits that claims 12-14 are also allowable for allowance for at least the reasons given above in connection with claim 9.

Claim 18

Claim 18 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Landauer (U.S. Patent No. 4,907,132) as applied to Claim 9 above, and further in view of Prescott (U.S. Patent No. 5,616,140). This rejection is respectfully traversed.

Claim 18 depends from claim 9, which was shown above to be allowable. Accordingly, Applicant respectfully submits that claim 18 is also allowable for allowance for at least the reasons given above in connection with claim 9. In addition, claim 18 is further patentably distinguishable over the cited patents because these patents do not disclose, teach or suggest "a container includes at least one externally flexible portion coupled to a switching device such that movement of the flexible portion switchably connects the light source to a power source" as recited in claim 18.

Claim 20

Claim 20 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Landauer (U.S. Patent No. 4,907,132) as applied to Claim 9 above, and further in view of Prescott (U.S. Patent No. 5,616,140). This rejection is respectfully traversed.

Claim 20 depends from claim 9, which was shown above to be allowable. Accordingly, Applicant respectfully submits that claim 20 is also allowable for allowance for at least the reasons given above in connection with claim 9.

Claims 25-26

Claims 25-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Prescott (U.S. Patent No. 5,616,140) as applied to Claim 21 above, and further in view of Landauer (U.S. Patent 4,907,132). This rejection is respectfully traversed.

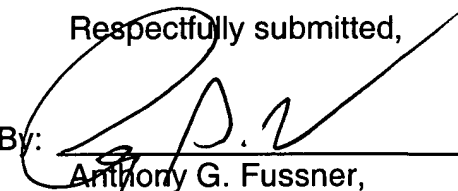
The cancellation of claims 25-26 has rendered moot the rejections thereof.

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action, and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (314) 726-7502.

Applicant believes that the appropriate fees have been included with this filing. If, however, Applicant owes any additional fee(s), the Commissioner is hereby authorized to charge the fee(s) to Deposit Account No. **08-0750**. In addition, if there is ever any other fee deficiency or overpayment under 37 C.F.R. §1.16 or 1.17 in connection with this patent application, the Commissioner is hereby authorized to charge such deficiency or overpayment to Deposit Account No. **08-0750**.

Dated: June 6, 2005

Respectfully submitted,

By: _____
Anthony G. Fussner,
Reg. No. 47,582

Harness, Dickey & Pierce, P.L.C.
7700 Bonhomme, Suite 400
St. Louis, Missouri 63105
(314) 726-7500
AGF/dmkd